IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

MFA.No. 622 of 2001()

OPMV.1723/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
.....

APPELLANT/PETITIONER:

AZAD,S/O.NARAYANAN (MINOR)
DATE OF BIRTH 21.2.1985,
REP. BY HIS FATHER NARAYANAN, PUTHANPURAYIL,
KUTTAMPUZHA.

BY ADV. SRI.SUNNY VARGHESE

RESPONDENTS/RESPONDENTS:

1.PAREEDU,S/O.BAVA,CHATHANATTU HOUSE,
NELLIKUZHI, ERAMALLOOR VILLAGE,
KOTHAMANGALAM.

2.MYTHEEN,S/O.KHADIR,VADAKKEL HOUSE,
PALLARIMANGALAM, MYLOOR, VARAPETTY VILLAGE.

3.THE BRANCH MANAGER, NATIONAL INSURANCE CO. LTD.,
THODUPUZHA.

4.THE BRANCH MANAGER, THE ORIENTAL INSURANCE CO. LTD.,
KOTHAMANGALAM.

BY ADV. SRI.RAJAN P.KALIYATH FOR R3
SRI.M.JACOB MURICKAN FOR R4

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.622 OF 2001 ()

Dated this the 23th day of October, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant while travelling as a pillion rider in a motor cycle met with an accident when bus driven by the 2nd respondent and insured by the 4th respondent hit the motor cycle and as a result of which he suffered serious injuries. But against a claim for Rs.50,000/- only Rs.5,200/- was allowed by the tribunal. He was first admitted in Mar Baselious Medical Mission Hospital, Kothamangalam and thereafter in Medical Mission Hospital, Kolencherry. He has to undergo follow up treatment also. Ext.A8 is the wound certificate issued from the Medical Mission Hospital, Kolencherry. He had bleeding from nostril, open wound on the left parietal area, swelling over left knee and left clavicle. Ext.A9 is the discharge summary which shows that appellant had sustained depressed fracture of left frontoparietal region. But brain was not effected. He was

treated with complete bed rest and antibiotics. He has produced medical bills amounting to Rs.2,727/-. But according to the claimants that was the only medical expenses from the Kolencherry Hospital and not the expenses incurred in the Kothamangalam Hospital where he was first admitted. The tribunal has granted only Rs.2,800/-. We are of the opinion that considering the nature of injuries including depressed fracture of left frontoparietal open, we are of the opinion that another Rs.2,000/- ought have been granted for treatment expenses. The tribunal has granted only Rs.8,000/- for pain and sufferings. We are of the opinion that tribunal ought have granted Rs.10,000/- for pain and sufferings considering the injuries suffered by him at the age of 12 and the pain he had undergone. Thus he is entitled to Rs.2,000/- more under the head of pain and sufferings. It is averred that he is having headache. In the above circumstances, we are of the opinion that for the future inconveniences including headache, consequent disability, loss of studies for a considerable period of treatment etc. Rs.6,000/- ought have been granted as an additional amount. Thus additional amount calculated is

Rs.10,000/-. There is 25% contributory negligence on the part of the rider of the motor vehicle. The above finding is fully justifiable on the basis of evidence. But the rider was not made a party. So the negligence on the part of the driver of the motor vehicle insured by the 4th respondent Insurance company is only 75%. Therefore 25% has to be deducted and additional amount of Rs.7,500/- shall be deposited by the Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.622 OF 2001 ()

J U D G M E N T

23rd October, 2007